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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/467,938	12/21/1999	JOHN J. CURRO	7897	2982

7590 10/24/2002

RODDY M BULLOCK
THE PROCTER & GAMBLE COMPANY
SHARON WOODS TECHNICAL CENTER
11450 GROOMS ROAD
CINCINNATI, OH 45242

EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 10/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/467,938	CURRO ET AL.	

Examiner	Art Unit	
Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 July 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 10-30 is/are pending in the application.

4a) Of the above claim(s) 28-30 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 10-27 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>12</u> .	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Response to Amendment

1. Amendment B, submitted as Paper No. 14 on July 10, 2002, has been entered. Claims 10 and 19 have been amended. Therefore, the pending claims are 10 – 30. Claims 28 – 30 are withdrawn from consideration as being drawn to a non-elected invention.
2. Amendment B is sufficient to overcome the 35 USC 112 1st paragraph rejections since the Applicant has amended the claims to clarify the materials used in the first and second layers, as well as clarifying the apertures in the laminate are located at the bond sites.
3. Additionally, Amendment B (pages 3 and 4) is sufficient to over come the 35 USC 112 2nd paragraph rejections set forth in sections 10 – 13. The term “fluid communication” is interpreted as fluid being allowed to pass from the first outer layer of the laminate to the second outer layer of the laminate.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claim 10 – 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 – 7, and 20 of copending Application No. 09/555,641 for the reasons of record.

This is a provisional obviousness-type double patenting rejection.

5. Claim 19 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20 of copending Application No. 09/553,871 for the reasons of record.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

6. Claims 10 – 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The term “prebonded” in claim 10 is indefinite. It is unclear what a “prebonded” web is. Is the web bonded in a specific manner? With respect to a prebonded nonwoven web, will any degree of bonding or intermingling between the fibers in the web qualify as “prebonded”? Further, how is a film web “prebonded”?

Claim Rejections - 35 USC § 102/103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 10 – 14, 17, 19 – 23, and 26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Srinivasan et al. (5,567,501) for the reasons of record.

Allowable Subject Matter

10. Claims 15, 16, 18, 24, 25, and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims for the reasons of record.

Response to Arguments

11. Applicant's arguments filed July 10, 2002 have been fully considered but they are not persuasive. The Applicant argues that Srinivasan et al. fails to teach using "prebonded" nonwoven outer layers since the outer layers taught by Srinivasan are webs of carded staple fibers (Amendment B, page 4). First, the term "prebonded" does not limit the outer layers to nonwoven layers with fused fibers as argued by the Applicant. A nonwoven web can be "prebonded" by entangling the fibers to some degree so that the nonwoven material will form a coherent layer. Thus, the nonwoven materials taught by Srinivasan are inherently "prebonded" to some degree, since the layers are individual nonwoven layers prior to forming the multi-layer laminate. Second, the fibers in the outer nonwoven layer are fused together when heat is added to bond the layers together. Thus, the final product in Srinivasan would comprise outer layers with fused fibers. This would meet the limitations of the final structure which is claimed by the Applicant, since the patentability of a product is based on the structure of the final product and not the method, i.e., prebonding, used to produce said final structure.

12. Additionally, the Applicant argues that the middle layer taught by Srinivasan is a low melting film layer and the middle layer in the Applicant's invention preferably has a melting point higher than the outer layers (Amendment B, page 5). In response to this the Examiner notes that the features upon which applicant relies (i.e., melting temperature of the middle layer)

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are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Hence, the claims do not exclude materials with lower melting points as the middle layer and the Applicant's arguments are not commensurate in scope with the claim limitations.

13. Finally, the Applicant's argument that Srinivasan does not disclose apertured webs, but discloses fibers which are fused to each other across apertures (Amendment B, page 5), is unpersuasive since the Srinivasan discloses a laminate with apertures as claimed by the Applicant. Therefore, the rejection based on Srinivasan is maintained.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
September 30, 2002

JLB

Terrel Morris
TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700